

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 21, 2009

JERRY RAY BROCK v. STATE OF TENNESSEE

**Appeal from the Criminal Court for Davidson County
No. 2005-B-844 Cheryl Blackburn, Judge**

No. M2009-00577-CCA-R3-PC - Filed January 22, 2010

Petitioner, Jerry Ray Brock, pled guilty to aggravated burglary in Davidson County. The sentence imposed was ten years to be served as a Range III, persistent offender. Shortly thereafter, he was transported to Georgia to serve a previous sentence. Petitioner presented a petition for post-conviction relief two years after the entry of the judgment. The post-conviction court dismissed the petition as being time-barred. On appeal to this Court, Petitioner argues that the statute of limitations should be tolled because he was transferred to Georgia to serve his sentence there. We conclude that incarceration in another state is not a due process violation requiring tolling of the one year statute of limitations. Therefore, we affirm the post-conviction court's dismissal of the petition.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES and THOMAS T. WOODALL, JJ., joined.

Jerry Ray Brock, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; John H. Bledsoe, Assistant Attorney General; Victor S. Johnson, District Attorney General, and Bret Gunn, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

On January 5, 2007, Petitioner, Jerry Ray Brock, entered an agreed guilty plea to aggravated burglary. Pursuant to the plea, he received a ten-year sentence to be served as a

Range III, persistent offender. The trial court ordered Petitioner's sentence to be served concurrently with a previous sentence in Georgia.

On January 7, 2009, Petitioner filed a pro se petition for post-conviction relief. On February 20, 2009, the post-conviction court dismissed the petition as being time-barred. Petitioner filed a timely notice of appeal.

ANALYSIS

On appeal, Petitioner argues that the post-conviction court erred in dismissing his petition as being time-barred because tolling of the statute of limitations is mandated by due process.

Under the Post-Conviction Procedure Act, a petition for post-conviction relief must be filed within one year of the date of the final action of the highest state appellate court to which an appeal is taken, or if no appeal is taken, within one year of the date on which the judgment became final. T.C.A. § 40-30-102(a). Unless one of the enumerated exceptions applies, a court does not have jurisdiction to consider an untimely petition. *See* T.C.A. § 40-30-102(b).

(b) No court shall have jurisdiction to consider a petition filed after the expiration of the limitations period unless:

(1) The claim in the petition is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required. The petition must be filed within one (1) year of the ruling of the highest state appellate court or the United States supreme court establishing a constitutional right that was not recognized as existing at the time of trial;

(2) The claim in the petition is based upon new scientific evidence establishing that the petitioner is actually innocent of the offense or offenses for which the petitioner was convicted; or

(3) The claim asserted in the petition seeks relief from a sentence that was enhanced because of a previous conviction and the conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid, in which case

the petition must be filed within one (1) year of the finality of the ruling holding the previous conviction to be invalid.

In the present case, the post-conviction petition was filed more than one year after Petitioner entered his guilty plea and thus well outside the statute of limitations. The post-conviction court properly found that Petitioner failed to show that one of the exceptions to the one-year deadline listed in the statute was applicable.

Petitioner states that shortly after he pled guilty to aggravated burglary he was transferred to Georgia for completion of a sentence in that State. He was later returned to Tennessee to serve the remainder of the sentence in question. Petitioner argues that his transfer to Georgia prevented him from having access to Tennessee laws and statutes in order to proceed. He posits that these facts support his argument that due process requires the tolling of the statute.

Petitioner cites no authority to support this position. Furthermore, prior opinions of this Court specifically state that incarceration in another state is not a ground for tolling of the statute of limitations. *See Jason Earl Hill v. State*, No. E2005-00968-CCA-R3-PC, 2006 WL 389667, at *3 (Tenn. Crim. App., at Knoxville, Feb. 16, 2005), *perm. app. denied*, (Tenn. Sept. 5, 2006) (stating “a petitioner’s incarceration in another stated does not toll the statute of limitations.”); *Brown v. State*, 928 S.W.2d 453, 456 (Tenn. Crim. App. 1996).

We conclude that Petitioner’s due process rights do not require the tolling of the statute of limitations. Therefore, we affirm the post-conviction court’s dismissal of the petition for post-conviction relief.

CONCLUSION

For the foregoing reasons, we affirm the dismissal of the petition by the post-conviction court.

JERRY L. SMITH, JUDGE